

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 1472 – SB 1560

March 7, 2016

SUMMARY OF ORIGINAL BILL: Provides an exception to the current requirements for executing wills. Authorizes attesting witnesses to a will to sign a self-proving affidavit contained within the will rather than having to sign the will itself.

Applies to wills executed before the effective date of the bill if the wills have not undergone final settlement without appeal or final settlement after conclusion of appeal.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENT (012810): Deletes all language after the enacting clause and rewrites the bill.

Provides that any will executed prior to July 1, 2016, will be considered executed, even if it does not meet the statutory requirements of Tenn. Code Ann. § 32-1-104, so long as: (1) the witnesses to the will signed a self-proving affidavit incorporated in a will; (2) the testator signed the actual will in accordance with Tenn. Code Ann. § 32-1-104; and (3) the language of the self-proving affidavit contains the required elements of a will attestation clause and the witness signatures meet the requirements of Tenn. Code Ann. § 32-1-104.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Unchanged from the original fiscal note.

Assumptions for the bill as amended:

- Under Tenn. Code Ann. § 32-1-104, a will, other than a holographic or nuncupative will, must be executed by the signature of the testator and two witnesses. The will itself must be signed by the attesting witnesses.
- The legislation would overturn a recent Court of Appeals case, *In re estate of Morris*, 2015 Tenn. App. LEXIS 62 (Tenn. Ct. App. Feb. 9, 2015), in which the court held that a will was not properly executed because the attesting witnesses signed a self-proving affidavit at the end of the will rather than the will itself. Further, the legislation would

HB 1472 – SB 1560

cure any defective will drafted prior to July 1, 2016, not properly executed under Tenn. Code Ann. § 32-1-104 that meets the requirements of the legislation.

- The legislation changes a technical requirement for wills, and will only affect cases that meet the specific facts of the *In re Estate of Morris* case. It is assumed that the legislation will not significantly impact the courts.
- The Administrative Office of the Courts confirms that the legislation will not significantly impact its caseload or operations.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in blue ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

/trm